IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.414 of 2013 and
Crl.M.P.No.1 of 2013

1. Vikaran Awasty
Chairman & Managing Director,
M/s Bush Foods Overseas Pvt. Ltd.
505-506, 5th floor, DLF South Court,
Saket, New Delhi 110 017.

2. Amit Gupta, Accountant,
M/s Bush Foods Overseas Pvt. Ltd.
505-506, 5th floor, DLF South Court,
Saket, New Delhi 110 017. ... Petitioners

Vs.

1. State Rep. by the Sub Inspector of Police,
II Team, Central Crime Branch,
Egmore, Chennai 600 008.

2. A.V.Balamurugan, Proprietor,
M/s Velmurugan Rice Merchants,
New No.725, Old No.400,
Poonamallee High Road, Arumbakkam,
Chennai 600 106. ... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to quash the complaint in Crime No.503/2012 on the file of the 1st respondent.

For Petitioner	:	Mr.S.Mukunth for M/s Sarvabhauman Associates
For 1st Respondent	:	Mr.T.Shunmugarajeswaran, Government Advocate (Crl. Side)
For 2nd Respondent	:	Mr. Swami Subramanyan for Mr.C.Sundaresan

ORDER

The petitioners are shown as accused in Crime No.503 of 2012 on the file of the II Team, Central Crime Branch, Egmore, Chennai for the alleged offences punishable under Sections 403, 406, 409, 418, 420, 380, and 120(b) of Indian Penal Code. The 2nd respondent lodged a complaint with the Central Crime Branch, Egmore, contending that the petitioners herein had taken away the invoices to the tune of Rs.79,79,352/- from his office, out of which a sum of Rs.76,52,777/- pertains to the first accused products and the balance of Rs.3,26,575/- pertains to local variety rice. It is further averred in the complaint that the invoices drawn in the name of the merchants, traders and shops indicate the sale price, which would include cost price and the margin of the complainant and that the accused No.5 to 8 knowing very well that they are not authorized to remit the amount directly to the first accused, depriving the complainant's share in the sale proceeds, had committed cheating and misappropriation of his funds.

2. In the present petition, the petitioners have contended that the first and 2nd petitioners being the Chairman and accountant respectively of M/s Bush Foods Overseas Private Limited, entered into an agreement with the 2nd respondent/de-facto complainant and pursuant to the said agreement, huge stocks were supplied to him for re-distribution to various retailers and that there was an arrears of Rs.82,56,000.63p as on 31.03.2012, for which the 2nd respondent issued a cheque bearing No.00089 for a sum of Rs.30,00,000/- drawn on Kotak Mahindra Bank in favour of M/s Bush Foods Overseas Private Limited, towards partial discharge of the amount due on that date. According to them, when the cheque was presented, the same was dishonoured for the reason "insufficient funds". It is also their contention that the 2nd respondent suddenly went missing and therefore, the officials of M/s Bush Foods Overseas Private Limited, met the father of the 2nd respondent and collected original invoices and bills and realised the proceeds from various merchants. According to them, the 2nd respondent had lodged a false complaint on 18.06.2012 with the Commissioner of Police, Chennai City, claiming that the petitioners herein had taken away the original invoices. Further, it is their contention that M/s Bush Foods Overseas Private Limited instituted a suit in C.S.No.486 of 2012 for recovery of a sum of Rs.43,91,045 together with interest and in the said suit the 2nd respondent filed the following three applications namely, (1) Application No.4333 of 2012 seeking a direction against the company to return his passport, which the company had obtained for his pleasure trip to Switzerland, (2) Application No.4334 of 2012 to direct the company to produce the original invoices and

(3) Application No.4335 of 2012 to direct the company to furnish the account. According to the petitioners, when the first petition was dismissed as infructuous, the other two applications were dismissed as not maintainable, after full contest. According to the petitioners, the dispute between the petitioners and the 2nd respondent is purely civil in nature and that he has suppressed the material facts and lodged the complaint with the Central Crime Branch.

3. Per contra, the learned Government Advocate (Crl.Side) would contend that though the First Information Report in Crime No.403 of 2012 was registered on 03.10.2012, based on the complaint preferred by the 2nd respondent, the 2nd respondent did not co-operate with the police for the investigation and therefore, the same is kept pending.

4. Mr.Swami Subramanian, learned counsel appearing for the 2nd respondent would contend that even according to the petitioners, they have taken the original invoices through their officials and had collected money from various merchants and deposited the same in the account of the first accused A/c No.00030330005940 in HDFC Bank. According to him, the said amount should have been remitted into the account of the 2nd respondent and since they have failed in doing so, they are liable to be punished for the offences punishable under Sections 120(B), 403, 406, 409, 418, 420 and 380 of Indian Penal Code.

5. At the outset, it may be observed that the petitioners herein have filed a suit in C.S.No.486 of 2012 before this court for recovery of money from the 2nd respondent and the same is pending. The Application No.4334 of 2012 filed by the 2nd respondent, seeking for a direction to the company to produce the original invoices, was dismissed as not maintainable. A perusal of the copy of the petition in Application No.4334 of 2012 in C.S.No.486 of 2012 shows that the same averments were made in the complaint preferred before the Central Crime Branch, Egmore. Infact, the 2nd respondent has prayed the court to direct the petitioners to furnish a detailed statement of accounts with regard to the amounts realized by them. The said petition in Application No.4335 of 2012 was also dismissed by this Court.

6. Mr.S.Mukunth, learned counsel appearing for the petitioners would contend that this court felt that these matters can be looked into at the time of trial and dismissed all the applications filed by the 2nd respondent herein. Therefore, a perusal of the records shows that there is a civil dispute between the parties and the complaint preferred by the 2nd respondent herein cannot be proceeded with by the Central Crime Branch, Egmore and the same is liable to be quashed.

7. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.503 of 2012 on the file of the Central Crime Branch (Team II), Egmore, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

mst

To

1. State Rep. by the Sub Inspector of Police,
   II Team, Central Crime Branch,
   Egmore, Chennai 600 008.

2. The Public Prosecutor,
   Madras High Court.

+1cc to Mr.S.Sundaresan, Advocate SR.No.42508
+1cc to Mr.Sarvabhauman Associates, Advocate SR.No.42463

CrL.O.P.No.414 of 2013

GN(13/07/2018)